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No. 89-500

IN THE

Supreme Court of the United States

October Term, 1989

MILLWRIGHT LOCAL NO. 1079,
Petitioner,

vs.

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA,

and

SIGURD LUCASSEN,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BRIEF OF RESPONDENTS UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA AND SIGURD LUCASSEN IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Did the District Court and the Sixth Circuit Court of Appeals apply the correct legal standard for judicial review of a union official's interpretation of a union constitution?

2. Did the District Court and the Sixth Circuit Court of Appeals correctly hold that Petitioner failed to prove a violation of the Labor-Management Reporting and Disclosure Act?

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STATEMENT OF THE CASE

This case involves the right of an international union to reorganize its subordinate bodies pursuant to the express authority set forth in the union's constitution. This is not a voting rights case.

As part of a nationwide reorganization of its subordinate bodies, the Respondent, United Brotherhood of Carpenters and Joiners of America (hereinafter "UBCJA"), through its General President, made a decision in January of 1988, to reorganize its local unions and district councils within the State of Ohio (Joint Exhibit No. 3). Reorganization of subordinate labor organizations within the UBCJA is specifically authorized by Section 6 of the Constitution and Laws of the UBCJA (hereinafter "Constitution"). The provisions of Section 6 of the Constitution authorize the UBCJA General President to establish, dissolve, merge, consolidate, or alter the trade or geographical jurisdiction of UBCJA local unions and district councils when he finds such actions to be in the "best interests" of the UBCJA and its members (Joint Exhibit No. 1).

Section 6 of the Constitution was specifically enacted by a majority vote of over 2400 democratically elected delegates to the UBCJA General Convention in 1974 (Tr. I-120). The authority bestowed upon the General President under Section 6 was not the product of a union fiat or dictate but rather the result of a democratic process, voted on and approved by UBCJA members.

One of the goals of the UBCJA reorganization in Ohio was to establish various local unions throughout the state consisting solely of millwrights in an attempt to insure the availability of a sufficient number of those tradesmen for referrals to local contractors (Tr. I-135).

Towards that end the reorganization plan in part called for the merger of various millwright locals around Ohio. Under the plan, the Petitioner (a local union consisting solely of millwrights), as well as another millwright local union in Cleveland, Ohio (Local 1929), were required to merge with Local 1871, also in Cleveland, to form a local union consisting solely of millwrights, and to thereafter be identified as Local 1871 (Joint Exhibit No. 3). Other groups of millwrights around Ohio were also required to merge under the order of reorganization to form new millwright locals. Any of the approximately eighty-six (86) members of the Petitioner Local who did not want to join the new millwright local union in Cleveland, Ohio were free to join another millwright local of their choice, including one located in Parkersburg, West Virginia.

Furthermore, members of the Petitioner Local who joined the new local union would still be able to work in West Virginia by obtaining a "Working Permit" from the Parkersburg local pursuant to Section 46C of the Constitution. Similarly, the same process would apply to those members of the Petitioner Local who joined the Parkersburg, West Virginia local and still wanted to work in Ohio (Tr. I-147, 148; See also Defendant's Exhibit A).

Prior to implementing the reorganization, the UBCJA leadership held numerous meetings with the business representatives and officers of the Petitioner Local, as well as their counterparts in other local unions, to explain the purpose as well as the process of the reorganization, and otherwise respond to questions raised regarding the reorganization (Tr. I-122).

On January 25, 1988, the UBCJA General President issued the letter of decision regarding reorganization (Joint Exhibit No. 3). Shortly thereafter the Petitioner

Local, pursuant to Section 6 of the Constitution, exercised its right to appeal the General President's reorganization decision directly to the General Executive Board of the UBCJA (Joint Exhibit No. 4). In a letter dated February 17, 1988, the General Executive Board concluded that there was insufficient information available for consideration of Petitioner's appeal and offered it the opportunity to present its petition in writing and to submit it to the General Executive Board on or before March 21, 1988 (Joint Exhibit No. 5). With the assistance of legal counsel, Petitioner prepared and forwarded a "Position Statement" to the General Executive Board within the prescribed time-frame (Joint Exhibit No. 7; See also Tr. I-56).

Additionally, Petitioner's business agent requested, and was granted, the right to appear before the General Executive Board to argue why the merger should not occur (Tr. I-64). At an April, 1988 meeting of the UBCJA Executive Board in Washington, D.C. the Petitioner was allowed to present all relevant material to the General Executive Board for its deliberation, including its concerns about the potential effect of the reorganization on the voting rights of its members (Tr. I-65).

On April 20, 1988, the General Executive Board for the UBCJA issued a decision dismissing Petitioner's appeal and upholding the finding of the General President that the proposed restructuring of local unions in Ohio, including the merger of the Petitioner Local, would be in the "best interests of the membership of the United Brotherhood." (Joint Exhibit No. 8). The General President of the UBCJA did not participate in the Board's decision (Tr. I-129, 154).

This litigation commenced on May 5, 1988, in the Court of Common Pleas of Jefferson County, Ohio. Respondents removed the action to the United States District Court for the Southern District of Ohio, Eastern Division, on May 13, 1988. Petitioner's motion for a preliminary injunction was heard by the Court on June 14, 1988, consolidated with the trial on the merits, and continued until July 5, 1988 for further testimony.

Following the trial on July 5, 1988, the District Court issued its opinion on July 28, 1988. The Sixth Circuit Court of Appeals, in a decision rendered July 10, 1989, affirmed the District Court's opinion. Petitioner's request for a rehearing was denied on August 8, 1989.

ARGUMENT IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

A. PETITIONER HAS FAILED TO DEMONSTRATE SPECIAL AND IMPORTANT REASONS WHY A WRIT OF CERTIORARI SHOULD ISSUE.

Petitioner has not articulated any "special and important reasons" why this Court should grant a writ of certiorari utilizing the considerations set forth in Rule 17 of the Rules of the Supreme Court of the United States. The decision of the Sixth Circuit Court of Appeals does not conflict with a decision of another federal court of appeals on the same matter, does not conflict with a state court of last resort on a question of federal law, nor does it depart from the accepted and usual course of judicial proceedings or sanction such a departure by the lower court. The Court of Appeals decision did not decide an important issue of federal law which requires further settlement by this Court, nor does its decision conflict with a prior decision of this Court.

B. THE DISTRICT COURT AND THE SIXTH CIRCUIT COURT OF APPEALS APPLIED THE CORRECT LEGAL STANDARD FOR JUDICIAL REVIEW OF A UNION OFFICIAL'S INTERPRETATION OF A UNION CONSTITUTION.

On remand following this Court's decision in *United Brotherhood of Journeymen and Apprentices of the Plumbing and Pipefitting Industry v. Local 334*, 452 U.S. 615 (1981), the Third Circuit in *Plumbers, Local 334 v. Plumbers*, 669 F.2d 129 (3rd Cir., 1982), cited what it characterized as one of two "fundamental principles of law" applicable to the case:

> [C]ourts are reluctant to substitute their judgment for that of union officials in the interpretation of the union's constitution, and will interfere only where the official's interpretation is not fair or reasonable. [citations omitted]

669 F.2d at 131.

This standard has been adopted in the same or similar form by other Circuits which have addressed the issue. See *Vestal v. Hoffa*, 451 F.2d 706, 709 (6th Cir. 1971), *cert. denied*, 406 U.S. 934 (1972); ("Courts . . . will interfere only when the official's interpretation is not fair or reasonable."); *Carpenters, Local 657 v. Sidell*, 552 F.2d 1250 (7th Cir. 1977), *cert. denied*, 434 U.S. 862 (1977) (interpreting the same provision of the UBCJA Constitution at issue here); *Stelling v. IBEW Local 1547*, 587 F.2d 1379, 1389 (9th Cir. 1978), *cert. denied*, 442 U.S. 949 (1979) ("... when the union officials have offered a reasonable construction of the constitution, and no bad faith on their part has been shown, the courts should not disturb the union official's interpretation); *Local 317, Mail Handlers v. National Post Office Mail Handlers*, 696 F.2d 1300, 1302 (11th Cir. 1983) (A court is bound to accept the interpretation placed on the Constitution by the [union] if it is fair and reasonable); *Monzillo v. Biller*, 735 F.2d 1456, 1458 (D.C. Cir. 1984) ("An interpretation of a union constitution is entitled to considerable deference by a reviewing court and should not be overruled unless the court finds the interpretation was unreasonable or made in bad faith); and *Newell v. Electrical Workers*, 789 F.2d 1186, 1189 (5th Cir. 1986) ("We will not invalidate the International's interpretation of its own constitution unless it is patently unreasonable").

In *Sidell, supra*, the Seventh Circuit affirmed an order of summary judgment in another case involving Section 6A of the UBCJA Constitution and the UBCJA's authority to require an affiliation between two of its subordinate bodies. The Seventh Circuit held in part:

> Under Section 6A, the affiliation order may stand even though it does not meet with plaintiff's approval, for this part of the union's constitution

> has delegated this discretionary decisional authority to the general president . . .

552 F.2d 1256.

In *Motion Picture Videotape Editions Guild, Local 776 v. International Sound Technicians,* 800 F.2d 973 (9th Cir. 1986), *cert. denied,* 483 U.S. 1022 (1987), this Court again refused to grant certiorari in a case in which the Ninth Circuit held:

> Absent a specific limitation in a union constitution, this court will not interfere with the efforts of a union's leaders to manage the affairs of their organization. A division of jurisdiction among local unions is one such area in which this Court declines to interfere. Disputes between an international and its locals, or disputes between locals, are best left for internal settlement.

800 F.2d at 976.

Petitioner would have this Court steer from its longstanding course of avoiding unnecessary interference in the internal affairs of unions to accept the role of substantively reviewing each and every decision of a union with regard to the jurisdictional boundaries of its subordinate organizations. Further, Petitioner asks this Court to make such a radical departure in a case where Petitioner presented no evidence whatsoever that the UBCJA General President acted in bad faith or thought that his decision was anything other than one which was in the best interests of the UBCJA membership at large.

As discussed more fully herein (Part C, *infra*), Petitioner argues that the interests of its eighty-six (86) members should take precedence over the UBCJA membership at large because of its unfounded speculation that the reorganization, at some undefined future point, might negatively impact their statutorily protected voting rights under the Labor-Management

Reporting and Disclosure Act, 29 U.S.C. Section 401 *et seq.* Towards that end, Petitioner would have this Court rewrite Section 6A of the UBCJA Constitution to limit the General President's authority to reorganize solely to those cases where he finds such reorganization to be in the best interests of the affected local union(s), irrespective of the interests of the UBCJA membership as a whole.

The legality of Section 6 of the UBCJA Constitution as written is not at issue in this type of case as the Eleventh Circuit succinctly noted in *Local 317, Mail Handlers v. National Post Office Mail Handlers, supra*:

> The focus of a case such as this, therefore, is on the fairness and reasonableness of [the union's] interpretation. This turns on whether it is a fair interpretation of the words and provisions of the Constitution, not whether it would be fair and reasonable for the [union] Constitution to provide the authority sought by the [union]. That distinction is important here because no argument could be made that a provision authorizing the action here taken would be unsound or legally prohibited.

696 F.2d at 1302.

Petitioner entreats this Court to review the reasonableness of both the General President's decision to reorganize as well as the merits of the individual tenets of his reorganization plan. This is a much more intrusive scope of review than that traditionally adopted by the Circuits, *i.e.*, whether or not the General President's determination that he had the *authority* to reorganize was based on a reasonable interpretation of Section 6A of the UBCJA Constitution.

Applying well-settled principles of law both the District Court and the Sixth Circuit Court of Appeals determined that the General President's reorganization was based on a reasonable interpretation of the UBCJA Constitution. There is no sound reason to disturb those holdings and accordingly the Petition for Writ of Certiorari should be denied.

C. THE DISTRICT COURT AND THE SIXTH CIRCUIT COURT OF APPEALS CORRECTLY HELD THAT PETITIONER HAD FAILED TO PROVE A VIOLATION OF THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT.

The Petitioner Union, having failed to show that the unilateral reorganization was not allowed by the UBCJA Constitution, and having failed to show there was bad faith on behalf of the UBCJA in the reorganization, attempted to characterize this litigation as a "right to vote" case, expressly regulated by Title I of the Labor-Management Reporting and Disclosure Act (LMRDA), 29 U.S.C. Section 401 *et seq.* It has failed also in this effort.

The LMRDA was passed to regulate the internal affairs of labor organizations. The goal of union democracy was established in Title I, with specific guarantees for freedom of speech, right to vote for election of officers, and to vote on certain dues increases, among others.

Unions, despite these specific restrictions on their activities, were still left to control their own internal machinery. As the legislative history has taught us:

> *"Additional evidence that Congress regarded the union's desire to maintain control over its own affairs as legitimate is provided by the history of other sections of the LMRDA. In drafting Titles II*

> *through VI, Congress was guided by the general principle that unions should be left free to operate their own affairs, as far as possible.*" S. Rep. No. 1684, 85th Cong., 2d Sess., 4-5 (1958). It believed that only essential standards should be imposed by legislation, and that in establishing those standards, great care should be taken not to undermine union self-government. *Given certain minimum standards,* "*individual members are fully competent to regulate union affairs.*" *Ibid.* Thus, for example, in Title IV, which regulates the conduct of union elections, Congress simply set forth certain minimum standards. So long as unions conform with these standards, they are free "to run their own elections." *Wirtz v. Glass Bottle Blowers,* 389 U.S., at 471, 88 S. Ct., at 648. Congress' desire to permit unions to regulate their own affairs and to minimize governmental intervention suggests that it would have endorsed union efforts to reduce outsider influence.

United Steelworkers of America v. Sadlowski, 457 U.S. 102, 117 (1982) (emphasis added).

Accordingly, this Court has allowed court review of union internal affairs where there have been direct violations of specific guarantees of Title I: See, *Calhoon v. Harvey,* 379 U.S. 134 (1964) (election of officers, eligibility to run for office); *Musicians v. Wittstein,* 379 U.S. 171 (1964) (dues increases); *United Steelworkers of America v. Sadlowski, supra* (restrictions on contributions to officers' election campaigns); *Finnegan v. Leu,* 456 U.S. 431 (1982) (union discipline of members); and *Sheet Metal Workers v. Lynn,* _____ U.S. _____, 109 S. Ct. 639, 102 L. Ed. 2d 700 (1989) (union discipline of member in violation of "free speech" provisions of Title I). This Court has not extended Title I to indirect restrictions on the right to vote, especially where the effect is so indirect as in the reorganization

and merger of local unions. This case does not cry out for the far-reaching extension of Title I as sought by the Petitioner Union.

Furthermore, Petitioner's claim that its members will be "... effectively prohibited from attending union meetings and thus from participating in union affairs and voting on union matters ..." is unsupported by the record in this case and is the product of Petitioner's unbridled speculation. As Petitioner correctly points out, the authority of the UBCJA General President to reorganize is limited by the following provision in Section 6A of the UBCJA Constitution:

> The vested rights of the members shall be preserved and where action as herein described is taken the General President and General Executive Board shall preserve the membership rights of the members of affected Local Unions, including their right to attend and participate in meetings, to vote, to nominate candidates and to be nominated and run for office or business representative.

Petitioner ignores however the evidence in the record of this case which led both the District Court and Sixth Circuit Court of Appeals to hold that the Petitioner had failed to prove a claim under the LRMDA.[1]

The evidence the Petitioner did present consisted of pure speculation and conjecture. Where Petitioner claimed that the reorganization would negatively impact on previously negotiated collective bargaining agreements, the District Court found that no contractor

[1] At both the District Court and the Sixth Circuit Court of Appeals, Respondents took the position that the Petitioner is not "... a member of a labor organization ..." and thus had no standing to prosecute a claim on its own behalf based on alleged violations of 29 U.S.C. Section 411. Although neither the District Court nor the Sixth Circuit decided the issue, Respondents still maintain their claim. *See, Commission House Drivers v. Teamsters Joint Council 41,* 595 F. Supp. 574 (N.D. Ohio, 1984).

"... intends to, or had threatened to, reject a pending collective bargaining agreement because of the proposed reorganization". The District Court further held that Petitioner had failed to prove that any of its members' health and welfare benefits would be negatively affected by the reorganization. Significantly, at the time of trial there was no evidence that any members of the Petitioner Local had been denied the right to attend and participate in meetings, to vote, to nominate candidates and to be nominated to run for office or business representative. In fact, none of the members had made any attempt to join another millwright local in Cleveland, Ohio, Parkersburg, West Virginia or anywhere else.

In an attempt to address some of the concerns of members of the Petitioner Local who may choose to join the new millwright local in Cleveland, Ohio, the UBCJA leadership had directed either that meeting locations of the new local be rotated to various locations in eastern Ohio or that ballots be used to accommodate members who did not live near the local's office. Additionally, the concept of satellite offices was also under consideration to better accommodate the members who chose to join the Cleveland local. As the Sixth Circuit noted, this is a much different case than the Seventh Circuit was faced with in *McGinnis v. Local Union 710, International Brotherhood of Teamsters*, 774 F.2d 196 (7th Cir. 1985), *cert. denied*, 475 U.S. 1121 (1986):

> In *McGinnis*, the local had imposed an in-person voting requirement on its members and refused to authorize regional meetings or mail-in ballots. It is clear from *McGinnis*, that if, in that case, the International Union had provided regional meetings or mail-in ballots, there would not have been a Section 101 violation.

878 F.2d at 963.

Unlike *McGinnis*, this case does not involve a challenge to a specific provision of a union constitution which circumscribes the voting rights of its members. Petitioner claims the *effect* of the reorganization will be to deny its members such rights but it presented no evidence of any member being denied his or her rights under Title I as a result of the reorganization. If, once the reorganization is completed, former members of the Petitioner Local who join either the new local in Cleveland, Ohio or another millwright local, believe their rights under Title I are somehow infringed upon, internal union remedies are available under the UBCJA Constitution to address their concerns.[2]

Unlike the numerous cases by the Petitioner, this is not a case in which the lower courts were faced with review of a union rule which directly conflicts with Title I. Although Petitioner argues that the reorganization will have an effect on the Title I rights of its members, none of those members has yet made a decision as to which new local union they may join, and accordingly have not been denied the right to vote, attend meetings, nominate or be nominated for office. An otherwise valid reorganization should not be undone because the Petitioner, in the interest of attempting to insure its perpetuity and preserve its own self-interest, raises the unwarranted specter of a Title I violation.

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[2] For example, Section 57G of the UBCJA provides in pertinent part:

> Any member, or any Local Union, District State or Provincial Council or Industrial Council having any grievance may appeal to the General President within thirty (30) days from the date the grievance occurred. *All protests directed to the conduct of nominations or elections, or election procedures, in any subordinate body may be appealed to the General President within thirty (30) days from the date of the election.* All grievances and election protests shall be in writing and shall contain a brief statement of the grounds relied upon (emphasis added).

CONCLUSION

For the reasons set forth herein, Respondents respectfully request that the Petition for Writ of Certiorari be denied. Petitioner has not demonstrated any special and important reasons why a Writ should issue.

Respectfully submitted,

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